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No.85-577

Supreme Court, U.S.
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In The Supreme Court of the United States

October Term, 1985

MICHAEL GENE HAAS,

Petitioner,

vs.

CHET WEINER,
THE COUNTY OF REDWOOD,
JERRY LUTTMAN,
LYON COUNTY,
LEON VAN DEN BROEKE,
THE COUNTY OF YELLOW MEDICINE,
PAUL R. MOE,
and
MARTIN ARIMBORGO,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CERTIFICATE OF SERVICE

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QUESTIONS PRESENTED

I. WHETHER RESPONDENTS' CONDUCT IN SUPPLYING THE PETITIONER WITH ALCOHOL AND MARIJUANA, KNOWING HE WAS CHEMICALLY DEPENDENT, CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT?

II. WHETHER PETITIONER HAD A PROTECTABLE LIBERTY INTEREST IN THE TERMS OF HIS COURT ORDERED SENTENCE WHICH WAS INFRINGED WITHOUT DUE PROCESS OF LAW?

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STATEMENT OF THE CASE

Following discussion with counsel for all respondents in this matter, it was agreed that the following brief in opposition to the Petition for Writ of Certiorari, be submitted on behalf of all respondents.

This matter is before the Court on the petitioner's Petition for a Writ of Certiorari following the Eighth Circuit Court of Appeals' affirmance of the District Court's granting of Summary Judgment in favor of all defendants. The District Court, Judge Harry MacLaughlin presiding, ruled that petitioner had no federal cause of action, dismissed petitioner's federal claims with prejudice, and dismissed petitioner's state law claims without prejudice. The Eighth Circuit Court of Appeals, Judges Lay, Arnold, and Sachs, presiding, affirmed Judge MacLaughlin's Order in all respects.

The petitioner Michael Haas has a long criminal history, having been convicted of at least 12 crimes since 1973, ranging from assault to aggravated forgery. On November 5, 1981, Haas, was sentenced in Lyon County to a term of nine months for aggravated forgery. Haas claims that while incarcerated in Lyon County, he was coerced into serving as an undercover drug informant and suffered considerable damage as a result.

At the time of his sentencing in November 1981, Haas was approached by Yellow Medicine County Sheriff Paul Moe, and they discussed charges pending against Haas in Yellow Medicine County. Sheriff Moe told Haas that he could be sentenced to ten years in prison for the charges of aggravated forgery pending against him there, but that if Haas agreed to act as an undercover drug informant for him, he would get a "sweetheart plea bargain" for Haas on the pending charges in Yellow Medicine County. Prior to accepting Sheriff Moe's proposal, Haas consulted with his attorney, George Harrelson. Although two versions of this conversation with Harrelson exist, in both, Harrelson told Haas that he had no objection to Haas working as an undercover agent, and that it was up to Haas to decide whether he should cooperate with Sheriff Moe.

On November 27, 1981, after consulting with his attorney, and after approximately one month of sobriety, Haas accepted Sheriff Moe's offer, and cooperated with him in undercover drug activities. In return, Haas received a five-year "stayed" sentence on the Yellow Medicine County charges. Thus, Haas served no time beyond his nine month Lyon County sentence, and Sheriff Moe kept his part of the bargain.

Haas, a self-admitted alcoholic and drug addict, alleges that he was required or at least permitted to use alcohol as part of his cover while working undercover, and on occasion smoked marijuana, even when it was not in connection with buying drugs. Haas claims that these activities had a detrimental effect on his physical and emotional well-being.

After five months in the Lyon County Jail, Haas took advantage of an option to complete a three month treatment program at Willmar State Hospital in lieu of serving the last one and one-half months of his jail term. On March 21, 1982, Haas went to Willmar for treatment and stayed 58 days. It is alleged that Sheriff Moe pressured Haas while he was at the treatment program and finally succeeded in getting Haas to agree to additional undercover police work. Haas claims that this conduct interfered with his ability to concentrate on his drug rehabilitation treatment. On June 18, 1982, eighteen days following his release from treatment at Willmar, Haas aided in the commission of a burglary. He plead guilty to that crime in December 1982. The present action ensued.

SUMMARY OF ARGUMENT

I. The conduct of respondents was not so barbarous as to give rise to a violation of the Eighth Amendment. Haas received treatment for his chemical dependency, and his consumption of alcohol or marijuana was voluntary.

II. A prisoner has no protectable liberty interest in the terms of his sentence. Even if Haas had a liberty interest in the terms of his Lyon County sentence, this interest was not infringed without due process since he consulted with his attorney prior to agreeing to act as an informant and the sentencing judge approved of the plea bargain.

ARGUMENT

I. RESPONDENTS' CONDUCT IN SUPPLYING THE PETITIONER WITH ALCOHOL AND MARIJUANA, KNOWING HE WAS CHEMICALLY DEPENDENT, DID NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT.

Assuming that all of petitioner's claims regarding his use of alcohol and marijuana while working as an undercover agent are true, these claims alleged do not show sufficiently barbarous conduct on the part of respondents to rise to the level of a constitutional violation. See *Estelle v. Gamble,* 429 U.S. 97 (1976), *Freeman v. Lockhardt,* 503 F.2nd 1016 (8th Cir. 1974); *Westlake v. Lucas,* 537 F.2nd 857 (6th Cir. 1976).

These cases make clear that the invocation of the Eighth Amendment protection is reserved for cases of extreme cruelty and deliberate indifference to the serious medical needs of prisoners. Here, Haas was not denied any needed medical treatment, since he received 58 days of treatment at a treatment center for chemical abuse in Willmar, Minnesota pursuant to his sentence in Lyon County. In addition, there is no substantial evidence that Haas' will was overborne in his agreement to act as an undercover agent. After initially refusing Sheriff Moe's offer, Haas accepted only after consulting with his attorney. His consumption of marijuana and alcohol while in the Lyon County Jail was admittedly voluntary, and conduct in which one voluntarily engages cannot be said to violate the Eighth Amendment.

II. PETITIONER DID NOT HAVE A PROTECTABLE LIBERTY INTEREST IN THE TERMS OF HIS COURT ORDERED SENTENCE WHICH WAS INFRINGED WITHOUT DUE PROCESS OF LAW.

Haas contends that he had a liberty interest in his Court ordered sentence which was violated when respondents offered him the chance to become an informant. This claim must fail due to the lack of the protectable liberty interest in the terms of a prisoner's sentence.

Prison officials have broad discretion in the administration of prisons. *Hewitt v. Helms,* 103 Sup. Ct. 864 (1983). The Constitution does not secure to a prisoner the right to be confined or to remain at any particular jail; *Olim v. Wakinekona,* 103 S.Ct. 174 (1983); *Burnside v. Frey,* 563 F. Supp. 1344 (D.C.Mo. 1983); or the retention of a particular prison job. *Gibson v. McEvers,* 631 F.2nd 95 (7th Cir. 1980).

Similarly, Haas had no protectable liberty interest in being confined to a cell for the duration of his sentence. Haas was never released from custody during his undercover activities since he was always in the custody of a sheriff or deputy sheriff. Minnesota Statutes Section 641.07 allows prisoners to be put to hard labor outside prison walls and nothing in Haas' original sentence prohibited this. There is no authority that the original sentencing judge's permission was required before the undercover activity could take place.

Even assuming that Haas had a protectable interest in being kept in his cell during his sentence, there is no showing that this interest was infringed without due process of law. Haas had the opportunity to consult with an attorney prior to agreeing to work undercover. The sentencing judge in Yellow Medicine County was aware of Haas' cooperation and approved the plea bargain involving the undercover activity. Therefore, there is no merit in Haas' claim that he was removed from jail in violation of the terms of his sentence without due process of law.

CONCLUSION

The facts herein do not in any way support the position of petitioner that he has been subjected to cruel and unusual punishment, or a deprivation of due process. In the absence of any constitutional violation, the Federal Courts are an inappropriate forum, and the Civil Rights Act is an inappropriate vehicle, for the redress sought by petitioner. The present Petition for Writ of Certiorari before this Court is frivolous and does not in any way present special or important reasons for review of this matter by this Court. The decisions of the District Court and the Eighth Circuit Court of Appeals reached below are entirely consistent with the decisions of this Court and other Federal courts, and do not present a basis for review by this Court. Therefore, respondents respectfully request this Court to exercise its discretion and deny in all respects the present Petition.

Respectfully submitted,

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Gary J. Gordon

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Julie A. Williams